

## **Chapter IX**

### **Investments**

#### **Article 46      Definitions**

For the purpose of this Chapter,

1. The term “investment” means every kind of asset invested by investors of one Party in accordance with the laws and regulations of the other Party in the territory of the latter, and particularly, though not exclusively, includes:

(a) movable and immovable property and other property rights such as mortgages, pledges and similar rights;

(b) shares, debentures, stock and any other kind of participation in companies;

(c) claims to money or to any other performance having an economic value associated with an investment;

(d) intellectual property rights, in particular copyrights, patents, trade-marks, trade-names, technical process, know-how and good-will;

(e) business concessions conferred by law or under contract permitted by law, including concessions to search for, cultivate, extract or exploit natural resources.

2. Any change in the form in which assets are invested does not affect their character as investments provided that such a change is in accordance with the laws and regulations of the Party in whose territory the investment has been made.

3. The term “investor” means,

(a) natural persons who have nationality of either Party in accordance with the laws of that Party;

(b) legal entities, including companies, associations, partnerships and other organizations, incorporated or constituted under the laws and regulations of either Party and have their seats in that Party.

4. The term “return” means the amounts yielded from investments, including profits, dividends, interests, capital gains, royalties, fees and other legitimate income.

#### **Article 47      Promotion and Protection of Investment**

1. Each Party shall encourage investors of the other Party to make investments in its territory and admit such investments in accordance with its laws and regulations.

2. Investments of the investors of either Party shall enjoy the constant protection and security in the territory of the other Party.

3. Without prejudice to its laws and regulations, neither Party shall take any unreasonable or discriminatory measures against the management, maintenance, use, enjoyment and disposal of the investments by the investors of the other Party.

4. Subject to its laws and regulations, each Party shall provide assistance and facilities to the other for obtaining visas and work permit to nationals of the other Party engaged in activities associated with investments made in the territory of that Party.

#### **Article 48 Treatment of Investment**

1. Investments of investors of each Party shall all the time be accorded fair and equitable treatment in the territory of the other Party.

2. Without prejudice to its laws and regulations, each Party shall accord to investments and activities associated with such investments by the investors of the other Party treatment not less favorable than that accorded to the investments and associated activities by its own investors.

3. Neither Party shall subject investments and activities associated with such investments by the investors of the other Party to treatment less favorable than that accorded to the investments and associated activities by the investors of any third Party.

4. The provisions of Paragraphs 3 of this Article shall not be construed so as to oblige one Party to extend to the investors of the other Party the benefit of any treatment, preference or privilege by virtue of:

(a) any other customs union, free trade zone, economic union and any international agreement resulting in such unions, or similar institutions;

(b) any international agreement or arrangement relating wholly or mainly to taxation;

(c) any arrangements for facilitating small scale trade in border areas.

#### **Article 49 Expropriation**

1. Neither Party shall expropriate, nationalize or take other similar measures (hereinafter referred to as “expropriation”) against the investments of the investors of the other Party in its territory, unless the following conditions are met:

(a) for the public interests;

(b) under domestic legal procedure;

(c) without discrimination; and

(d) against compensation.

2. The compensation mentioned in Paragraph 1 of this Article shall be equivalent to the value of the expropriated investments immediately before the expropriation or the impending expropriation becomes public knowledge, whichever is earlier. The value shall be determined in accordance with generally recognized principles of valuation. The compensation shall include interest at a normal commercial rate from the date of expropriation until the date of payment. The compensation shall also be made without delay, be effectively realizable and freely transferable.

#### **Article 50 Compensation for Damages and Losses**

Investors of one Party whose investments in the territory of the other Party suffer losses owing to war, a state of national emergency, insurrection, riot or other similar events in the territory of the other Party, shall be accorded by the other Party treatment, as regards restitution, indemnification, compensation and other settlements no less favorable than that accorded to the investors of its own or any third Party, whichever is more favorable to the investor concerned.

#### **Article 51 Transfers**

1. Each Party shall, subject to its laws and regulations, guarantee to the investors of the other Party transfer of their investments and returns held in its territory, including:

- (a) profits, dividends, interests and other legitimate income;
- (b) proceeds obtained from the total or partial sale or liquidation of investments;
- (c) payments made pursuant to a loan agreement in connection with investments;
- (d) royalties in relation to the matters in Paragraph 1 (d) of Article 46
- (e) payments of technical assistance or technical service fee, management fee;
- (f) payments in connection with projects;
- (g) earnings of nationals of the other Party who work in connection with an investment in its territory.

2. Nothing in Paragraph 1 of this Article shall affect the free transfer of compensation paid under Article 49 and 50 of this Chapter.

3. The transfer mentioned above shall be made in a freely convertible currency, at the prevailing market rate of exchange on the date of transfer in the territory of the Party accepting the investments.

#### **Article 52 Subrogation**

If one Party or its designated agency makes a payment to its investors under a guarantee or a contract of insurance against non-commercial risks in respect of an

investment made in the territory of the other Party, the latter Party shall recognize:

(a) the assignment, whether under the law or pursuant to a legal transaction in the former Party, of any rights or claims by the investors to the former Party or to its designated agency, as well as,

(b) that the former Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor and assume the obligations related to the investment to the same extent as the investor.

### **Article 53 Settlement of Disputes between Parties**

1. Any dispute between the Parties concerning the interpretation or application of this Chapter shall, as far as possible, be settled by consultation through diplomatic channel.

2. If a dispute cannot be settled through consultations within six months, it shall, upon the request of either Party, be submitted to an ad hoc arbitral tribunal.

3. The tribunal shall comprise of three arbitrators. Within two months of the receipt of the written notice requesting arbitration, each Party shall appoint one arbitrator. The two arbitrators shall, within two months, from the date of their appointment, select a national of a third Party, having diplomatic relations with both Parties, as Chairman of the arbitral tribunal.

4. If the arbitral tribunal has not been constituted within four months from the receipt of the written notice requesting arbitration, either Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Party or is otherwise prevented from discharging the said functions, the Member of the International Court of Justice next in seniority who is not a national of either Party or is not otherwise prevented from discharging the said functions shall be invited to make such appointments.

5. The arbitral tribunal shall determine its own procedure. The arbitral tribunal shall reach its award in accordance with the provisions of this Chapter and the principles of international law recognized by both Parties.

6. The arbitral tribunal shall reach its award by a majority of votes. Such award shall be final and binding upon both Parties. The arbitral tribunal shall, upon the request of either Party, explain the reasons of its award.

7. Each Party shall bear the costs of the arbitrator appointed by it and of its representation in the arbitral proceedings. The costs of the Chairman and tribunal shall be borne equally by the Parties.

8. Any dispute between the Parties concerning the interpretation or application of this Chapter shall be exclusively settled according to this Article.

#### **Article 54 Settlement of Disputes between Investors and one Party**

1. Any legal dispute between an investor of one Party and the other Party in connection with an investment in the territory of the other Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

2. If the dispute cannot be settled through negotiations within six months from the date, it has been raised by either party to the dispute, it shall be submitted by the choice of the investor:

(a) to the competent court of the Party that is a party to the dispute;

(b) to International Center for Settlement of Investment Disputes (ICSID) under the *Convention on the Settlement of Disputes between States and Nationals of Other States*, done at Washington on March 18, 1965, provided that the Party involved in the dispute may require the investor concerned to go through the domestic administrative review procedures specified by the laws and regulations of that Party before the submission to the ICSID.

Once the investor has submitted the dispute to the competent court of the Party concerned or to the ICSID, the choice of the forum shall be final.

3. The arbitration award shall be based on the law of the Party to the dispute including its rules on the conflict of laws, the provisions of this Agreement as well as the universally accepted principles of international law.

4. The arbitration award shall be final and binding upon the parties to the dispute. Both Parties shall commit themselves to the enforcement of the award.

#### **Article 55 Other Obligations**

1. If the legislation of either Party or international obligations existing at present or established hereafter between the Parties result in a position entitling investments by investors of the other Party to a treatment more favorable than is provided for by the Agreement, such position shall not be affected by this Agreement.

2. Each Party shall observe the commitments it may have entered into with the investors of the other Party as regards to their investments.

#### **Article 56 Consultations**

1. The representatives of the Parties shall hold meetings from time to time for the purpose of:

- (a) reviewing the implementation of this Chapter;
- (b) exchanging legal information and investment opportunities;
- (c) resolving disputes arising out of investments;
- (d) forwarding proposals on promotion of investment;
- (e) studying other issues in connection with investment.

2. Where either Party requests consultation on any matter of Paragraph 1 of this Article, the other Party shall give prompt response and the consultation be held alternatively in Beijing and Islamabad.